IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 8025 OF 2005

Smt. Suman Dhauji Mukne. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr.R. M. Pethe, Amicus Curiae for the Petitioner.
Mr. V.P. Malwankar, AGP for Respondent Nos.1 and 2.
Mr. R. S. Dhaigude i/b. Mr. S.P. Thorat for Respondent No.3.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 17, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at the request of Counsel taken up for hearing.

2. A letter was addressed to the Learned Chief Justice by the Petitioner on 27th October 2005. The Petitioner has stated therein that she is handicapped, infirm, aged 63 and was deserted by her husband over 35 years ago. The Petitioner worked at a Primary Health Centre at Dandi in the Taluka of

Palghar which falls within the jurisdiction of the Thane Zilla Parishad, from 7th May 1984 till 31st May 2003. Upon attaining the age of superannuation, she has not been sanctioned gratuity, monthly pension or other legitimate terminal dues by the Chief Executive Officer of the Zilla Parishad, Thane. The Petitioner is stated to have retired two and a half years ago. She complained to the Lokayukta on 11th October 2004 and her representation was referred to the Rural Development Department of the State of Maharashtra. The Petitioner thereafter received a communication dated 23rd June 2005, stating that the aforesaid Department of the State Government was collecting information on the subject for the previous five years from various Zilla Parishads and that the matter will be placed for consideration of the Cabinet after data was collected.

3. The letter of the Petitioner was directed to be treated as a Suo Motu Writ Petition. By our order dated 22nd February 2006 we appointed Shri R.M. Pethe, an Advocate practicing before this Court as amicus curiae. Notice was initially issued on 12th December 2005. On 22nd February 2006, the State Government was directed to file a reply. Again on 3rd April 2006, the

Respondents were directed as a last chance to file their reply on or before 13th April 2006 failing which it was said that the Court would be constrained to deal with the petition on merits. Though a reply has been filed by the Zilla Parishad, there is no reply by the State Government. The Zilla Parishad has stated in its reply that while it is true that the Petitioner was in the services of the Primary Health Centre at Dandi between 7th May 1984 and 31st May 2003, she was not shown on a permanent basis, but was on record as a daily wager. However, having regard to the long span of service, the Health Department of the Zilla Parishad submitted all details to the Rural Development Department on 31st March 2005. Information has been provided to the State Government in regard to 37 employees including the Petitioner; providing details of the post of the candidate, category, date of appointment, daily wages paid, yearly expenditure together with a statement of the pay scale and the expenditure envisaged if the services of these employees are regularised. The Petitioner's name figures at Sr. No.15 in the chart provided to the State Government. It was stated that the basic object in sending the said details to the State Government was to regularise the services of these employees. The issue is stated to be under consideration of the State Government.

4. At the hearing of the petition, the Learned AGP has stated on instructions that the Under Secretary of the Rural Development Department who was present before the Court seeks three months' to take a decision. If this was purely a matter of regularisation, we would have directed the State Government to take a decision in accordance with law. However, we are satisfied on hearing the submissions of the Learned Amicus and Counsel appearing on behalf of the the Zilla Parishad that the entitlement of an employee like the Petitioner to regularisation is governed by the mandatory statutory provisions contained in Section 249 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. Having regard to the aforesaid situation, we are of the view that it would neither be in accordance with law nor justice to defer a direction in regard to the pensionary dues of the Petitioner to an indefinite future date. Section 249 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, which came to be introduced in the year 1990 deals with the validation of certain appointments and provides as follows :

> “249. Notwithstanding anything contained in this Act or the rules made thereunder all officers and servants in the District Technical Service (Class III), District Service

(Class III) and District Service (Class IV) appointed by the Chief Executive Officer of the Zilla Parishads during the period commencing on the 18th June 1983 and ending on 17th February 1988 and who have been in continuous service whether with or without breaks on the commencement of the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1990 shall, for all intents and purposes be deemed to have been validly and regularly appointed, and no such appointment shall be called in question in any court of law merely on the ground that the appointments were made otherwise than in accordance with the procedure laid down by or under this Act or any other law for the time being in force, or on the ground that the District Selection Board or the Divisional Selection Board or any other Selection Boards were not duly constituted or were not functioning:

Provided that, each such appointment is made according to the Maharashtra Zilla Parishads District Services (Recruitment) Rules, 1967 and any orders issued in that behalf by the State Government from time to time and in force at the time of such appointment:

Provided further that, the payment of arrears of salary, allowances and bonus shall be subject to orders, if any, which may be issued in this behalf by the State Government:

Provided also that, the validation of appointments as aforesaid shall not put any such officers or servants, as are appointed during the said period in accordance with the procedure laid down by or under this act or any other law for the time being in force, to any disadvantage in any manner whatsoever."

5. The plain mandate of Section 249 is that an employee inter alia of the District Service (Class III or IV) appointed by the

Chief Executive Officer of the Zilla Parishad during the period commencing from 18th June 1983 and ending on 17th February 1988 and who has been in continuous service on the commencement of the Amending Act of 1990 with or without break shall for all intents and purposes be deemed to have been validly and regularly appointed. The Petitioner was admittedly appointed in the District Service (Class IV) between the aforesaid period. She was admittedly in continuous service on the date of the Amending Act of 1990. She was appointed under the directions of the CEO of the Zilla Parishad. Therefore, she is clearly entitled to the benefit of the deeming provision contained in Section 249. It may be noted that it has neither been stated on affidavit, nor is it the case of the Respondents at the hearing that the Petitioner is not entitled to the benefit of the provisions of Section 249. In the present case, the facts which have been placed before the Court by the Learned Amicus in the synopsis show that on 27th April 1984 the Block Development Officer under the powers delegated to him by the Chief Executive Officer, Zilla Parishad, Thane, appointed the Petitioner as a Lady Attendant at the Primary Health Centre, Tarapur on a regular pay scale of Rs.200-3-230-5-255-Efficiency Bar-5-250 plus admissible allowances for twelve months. The

appointment order contemplated reappointment upon one day's break. An order of reappointment came to be issued on 24th January 1986 with effect from 2nd May 1985 as a peon at the Primary Health Centre, Dandi after one day's technical break on 1st May 1985. It has been stated that from December 1987 deduction of Provident fund commenced. On 16th March 1988, there was another order of reappointment with effect from 9th May 1987 as peon at the same Primary Health Centre with one day's technical break on 8th May 1987. It has been stated that her pay came to be fixed under the Maharashtra Civil Service (Revised Pay) Rules, 1988 on the basic pay of Rs.750/-. A deduction towards Group Insurance Scheme commenced on 1st October 1990. On 22nd July 1993, the District Health Officer gave post facto approval to the appointment made by the Block Development Officer for twelve months and the name of the Petitioner was at Serial No.9 of the list. On 16th February 1995 the Health Officer addressed a letter to the Chief Executive Officer of the Zilla Parishad seeking permanency of the Petitioner indicating that the Petitioner was in continuous employment after 1st May 1985. On 11th May 2004 upon attaining the age of superannuation, the Petitioner addressed a representation to the Chief Executive Officer to pay pension and

arrears of salary for the month of April and May 2003. The District Health Officer sent a letter to the Petitioner on 26th May 2004 stating that a proposal for regularization of her services has already been sent to the State Government and pension would be paid after obtaining sanction. The District Health Officer addressed a letter to the Health Officer on 9th June 2004 to send a proposal for Provident Fund and GIS. The Petitioner was informed on 6th October 2004 by the Health Officer that the matter was kept in abeyance pending a decision on the issue of regularisation. On 23rd June 2005, the Desk Officer in the Rural Development and Soil Conservation Department addressed a letter to the Lokayukta that a policy decision would be taken on the question of regularisation.

6. As we have already noted, the Petitioner is squarely covered by the provisions of Section 249. She was appointed during the period 18th June 1983 and 17th February 1988 in the District Service (Class IV) by the Chief Executive Officer, Zilla Parishad, Thane and she was in continuous service until 31st May 2003 when she attained the age of superannuation. Under Section 249, even a technical break is clearly required to be ignored. There is, therefore, no question of a policy decision now being

taken to regularise the services of the Petitioner. The Petitioner falls in the category of those employees who have been regarded as having been validly appointed by the mandate of statute, as a result of the provision which was made in 1990. Under the second proviso to Section 249, Government has to take a decision on arrears of salary, allowance and bonus and issue orders thereon. That is a matter for determination by Government.

7. In the circumstances, we dispose of this petition in terms of the following directions:

-(i) The Petitioner shall from the date of her initial appointment be deemed to have been validly appointed as a Peon in the Primary Health Centre, Dandi within the jurisdiction of the Zilla Parishad, Thane;

-(ii) The First and Second Respondents shall fix the pay of the Petitioner with effect from the date of her initial appointment and carry out the exercise of refixation in accordance with law in terms of the applicable resolutions, rules and regulations of the State Government issued from time to time. All the pensionary

documentation shall also be completed. This exercise shall be carried out within a period of four weeks from today;

-(iii) Upon the fixation of the last drawn salary as on the date of her retirement, the Petitioner shall be granted provisional pension which shall be determined within a period of two weeks of the determination made under clause (ii) above and payment due to the Petitioner with effect from the date of retirement shall be paid over to her within a period of four weeks thereafter;

-(iv) The Government shall in terms of the first proviso to Section 249 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 take a decision in regard to the payment of the arrears of past salary to the Petitioner from the date of her appointment within a period of two months and upon taking aforesaid decision, the arrears that are found due and payable shall be paid over to the Petitioner within a period of three months thereafter;

-(v) The entire exercise of determining the pensionary payments due and payable to the Petitioner shall be completed

within a period of two months of the determination in clause (ii) and all pensionary payments inclusive of arrears from the date of superannuation shall be paid to the Petitioner within a period of one month thereafter after due adjustment of the provisional pension that has been paid to the Petitioner.

We record our appreciation of the able assistance rendered by the Learned Amicus curiae.

8. The Petition is accordingly disposed of in these terms. No order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.